

RESOLUTION NO. 1885

**RESOLUTION OF THE CITY OF SCOTTS VALLEY ORDERING A SPECIAL
ELECTION AND REQUESTING CONSOLIDATION OF SUCH ELECTION ON
NOVEMBER 5, 2013**

WHEREAS, pursuant to Elections Code Section 10002, the governing body of any city may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city relating to the conduct of an election; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a city for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition or office to be filled is to appear upon the same ballot as that provided for that statewide election, the city shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation of the election; and

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, pursuant to Elections Code Section 10400, such election for cities may be either completely or partially consolidated; and

WHEREAS, various district, county, state and other political subdivision elections may be or have been called to be held on November 5, 2013.

NOW THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Scotts Valley that it hereby orders a special election be called and consolidated with any and all elections also called to be held on November 5, 2013 insofar as said elections are to be held in the same territory or in a territory that is in part the same as the territory of the City of Scotts Valley, and hereby requests the Board of Supervisors of the County of Santa Cruz to order such consolidation under Elections Code Section 10400.

BE IT FURTHER RESOLVED AND ORDERED that the City Council of the City of Scotts Valley hereby requests the Board of Supervisors to permit the Santa Cruz County Elections Department to provide any and all services necessary for conducting the election.

BE IT FURTHER RESOLVED AND ORDERED that the City Clerk of the City of Scotts Valley is hereby ordered and directed to cause said proposed ordinance and notice of election to be published in accordance with the provisions of the California State Elections Code. The notice of the special municipal election provided for herein shall be published in a newspaper of general circulation, within the City of Scotts Valley, and in each edition thereof during the day of publication, such publication may be in substantially the following form, to wit:

The City Council of the City of Scotts Valley hereby submits to the registered electors of the City for their adoption or rejection in a special municipal election to be held in the City of Scotts Valley on Tuesday, November 5, 2013, the following proposal to amend the Scotts Valley Municipal Code:

Measure to be voted on: City of Scotts Valley Temporary Transactions and Use Tax

ORDINANCE NO. 186

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY
AMENDING CHAPTER 3.17 TO TITLE 3 REGARDING
A TRANSACTIONS AND USE TAX TO BE ADMINISTERED
BY THE STATE BOARD OF EQUALIZATION**

BE IT ORDAINED by the City Council of the City of Scotts Valley as follows:

SECTION 1. Chapter 3.17 of Title 3 of the Scotts Valley Municipal Code is amended in its entirety to read as follows:

“Chapter 3.17 Temporary Transactions and Use Tax

Sections:

- 3.17.01 Title
- 3.17.02 Operative Date
- 3.17.03 Purpose
- 3.17.04 Contract with State
- 3.17.05 Transaction Tax Rate
- 3.17.06 Place of Sale
- 3.17.07 Use Tax Rate
- 3.17.08 Adoption of Provisions of State Law
- 3.17.09 Limitations on Adoption of State Law and Collection of Use Taxes
- 3.17.10 Permit Not Required
- 3.17.11 Exemptions and Exclusions
- 3.17.12 Amendments
- 3.17.13 Enjoining Collection Prohibited

3.17.01 Title

This ordinance shall be known as the Temporary Transactions and Use Tax Ordinance. The City of Scotts Valley hereinafter shall be called “City.” This ordinance shall be applicable in the incorporated territory of the City.

3.17.02 Operative Date

“Operative Date” means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

3.17.03 Purpose

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.
- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

3.17.04 Contract with State

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such case the operative date shall be the first day of the first calendar quarter following the execution of such contract.

3.17.05 Transactions Rate Tax

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the City at the rate of one-half of one percent (0.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory for eight (8) years from the operative date of this ordinance.

3.17.06 Place of Sale

For the purposes of this ordinance, all retail sales are consumed at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3.17.07 Use Tax Rate

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer for eight (8) years after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one-half of one percent (0.50%) of the sales price of the property.

3.17.08 Adoption of Provisions of State Law

Except as otherwise provided in this ordinance and except insofar as they are consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

3.17.09 Limitations on Adoption of State Law and Collection of Use Taxes

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made when:
 1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
 2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
 3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
 - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
 4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

3.17.10 Permit not Required

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

3.17.11 Exemptions and Exclusions

- A. There shall be excluded from the measure of the transactions tax and the use tax in the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
 - 1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

 - 2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purpose of this paragraph, delivery to a point outside the City shall be satisfied.
 - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) if the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

 - b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

 - 3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

 - 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of the ordinance.

 - 5. For the purposes of subsections (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract of lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
 3. If the purchase is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.
 5. For the purposes of subsections (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
 7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.17.12 Amendments

All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not consistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of

this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

3.17.13 Enjoining Collection Forbidden

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.”

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, phrase, portion of the application thereof to any person or circumstance of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such ordinance and shall not affect the validity of the remaining portions thereof.

SECTION 3. REPEALS AND CONFLICTING ORDINANCES. All other ordinances of the City of Scotts Valley or provisions of the Scotts Valley Municipal Code which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4. CEQA COMPLIANCE. The City Council finds and determines that the enactment of this Ordinance is not a “project” as that term is used in the California Environmental Quality Act (“CEQA;” Cal. Pub. Resources Code Section 21000 et seq.) or the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.). Therefore, no environmental assessment is required or necessary.

SECTION 5. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

SECTION 6. TERMINATION DATE. The tax levied by this ordinance shall continue at the rate of 0.50% from April 1, 2014 until March 31, 2022. The authority to levy the tax imposed by this ordinance shall expire eight (8) years from the operative date of this Ordinance.

SECTION 7. CODIFICATION. Upon adoption of this ordinance pursuant to the voter approval referenced in Section 3.17.020, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this ordinance in the Scotts Valley Municipal Code.

This Ordinance was introduced on the 8th day of August, 2013, and passed and adopted on the _____ day of _____, 2013, at a duly held meeting of the City Council of the City of Scotts Valley by the following votes:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Randy Johnson, Mayor

Attest:

Tracy A. Ferrara, City Clerk

Approved as to Form:

Kirsten M. Powell, City Attorney

Ballot Question:

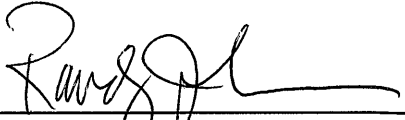
City of Scotts Valley Temporary Sales Tax. Shall a temporary one-half of one percent sales tax rate increase be approved for an eight year period to keep the budget balanced and to preserve police, parks, recreation and other city services for the residents of Scotts Valley?

Yes _____ No _____

BE IT FURTHER RESOLVED AND ORDERED that the Santa Cruz County Elections Department conduct the election for the above ballot measure.

PASSED AND ADOPTED this day of 8th day of August, 2013, by the following vote:

AYES: AGUILAR, BUSTICHI, JOHNSON, LIND, REED
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

APPROVED: 
Randy Johnson, Mayor

ATTEST: 
Tracy A. Ferrara, City Clerk